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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/584,676	05/31/2000	John J. Curro	7897R	2677
27752 7590 12/18/2003				
THE PROCTER & GAMBLE COMPANY INTELLECTUAL PROPERTY DIVISION WINTON HILL TECHNICAL CENTER - BOX 161 6110 CENTER HILL AVENUE CINCINNATI, OH 45224				
EXAMINER PIERCE, JEREMY R.				
ART UNIT 1771		PAPER NUMBER		

DATE MAILED: 12/18/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/584,676

Applicant(s)

CURRO ET AL.

Examiner

Jeremy R. Pierce

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 27 August 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 10-21 and 23-31 is/are pending in the application.
- 4a) Of the above claim(s) 10-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21 and 23-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## **DETAILED ACTION**

### ***Response to Amendment***

1. Applicant's amendment filed on August 27, 2003 has been entered. Claims 1-9 have been cancelled. Claims 21, 23-25, 28, and 29 have been amended. Claims 10-21 and 23-31 are pending, with claims 10-20 withdrawn from consideration.

### ***Drawings***

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "104" has been used to designate both supply roll for the first web and the supply roll for the second web. It is noted that according to the specification, the supply roll for the second should be number 105. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "130" has been used to designate both the central layer before it is bonded to the two outer layers and the nip formed between rollers 134 and 136. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

4. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference sign not mentioned in the description: 102 in Figure 10. A proposed drawing correction, corrected drawings, or amendment to the specification to add the reference sign in the description, are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.
5. The drawings are objected to because the copy of the photographs in Figure 8 is mostly black and it is impossible to tell what the picture is depicting. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Double Patenting***

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. Claims 21 and 23-31 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-15 and 19-31 of copending Application No. 09/467,938. Although the conflicting claims are not identical, they are not patentably distinct from each other because both sets of claims are directed to two outer web layers being bonded through apertures of a third central layer.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

8. Claims 21 and 23-31 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7, 9-15, and 24-26 of copending Application No. 09/886,730. Although the conflicting claims are not identical, they are not patentably distinct from each other because both sets of claims are directed to two outer web layers being bonded through apertures of a third central layer.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

9. Claims 21 and 23-31 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7 of copending Application No. 09/886,740. Although the conflicting claims are not identical, they are not patentably distinct from each other because both sets of claims are directed to two outer web layers being bonded through apertures of a third central layer.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

10. Claims 21 and 23-31 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 10 of copending Application No. 09/886,828. Although the conflicting claims are not identical, they are not patentably distinct from each other because both sets of claims are directed to two outer web layers being bonded through apertures of a third central layer.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

11. Claims 21 and 23-31 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-10 of copending Application No. 09/886,829. Although the conflicting claims are not identical, they are not patentably distinct from each other because both sets of claims are directed to two outer web layers being bonded through apertures of a third central layer.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

12. Claims 21 and 23-31 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of copending Application No. 09/886,830. Although the conflicting claims are not identical, they are not patentably distinct from each other because both sets of claims

are directed to two outer web layers being bonded through apertures of a third central layer.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

13. Claims 21 and 23-31 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 3-13, and 21-29 of copending Application No. 09/886,831. Although the conflicting claims are not identical, they are not patentably distinct from each other because both sets of claims are directed to two outer web layers being bonded through apertures of a third central layer.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

14. Claims 21 and 23-31 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-26 of copending Application No. 09/886,893. Although the conflicting claims are not identical, they are not patentably distinct from each other because both sets of claims are directed to two outer web layers being bonded through apertures of a third central layer.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

15. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

16. Claims 21 and 23-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Srinivasan et al. (U.S. Patent No. 5,830,555) in view of Shimalla (U.S. Patent No. 4,588,630) and Abuto et al. (U.S. Patent No. 5,804,021).

Srinivasan et al. teach a composite web comprising nonwoven webs of carded thermoplastic staple fibers thermally bonded to opposing sides of polymeric sheet (column 1, lines 58-68). Application of heat and pressure at spots in the calendar roll causes the thermoplastic material of the fibers and the elastomeric material of the film to melt, forming an aperture in the composite where the fibers of the carded webs become fused to one another (column 7, lines 25-27). Srinivasan et al. do not teach the aspect ratio of the bond sites. However, Srinivasan et al. do disclose the apertured areas can be tailored with any required open area by modifying the type of calender roll used and other processing conditions (column 8, lines 7-12). Shimalla discloses apertures formed in fused areas of nonwoven webs used for absorbent products (Abstract). Shimalla teaches the aspect ratio of the fused areas is a result effective variable that alters the characteristics of the resulting apertures (column 6, lines 13-21). It would have been obvious to a person having ordinary skill in the art at the time of the invention to form bond areas with an aspect ratio greater than 3, such as 10 (Applicant's claims 26, 27, 30, and 31) in the composite material of Srinivasan et al. in order to optimize the



resulting apertures for the intended use, as taught by Shimalla, since it has been held that discovering the optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). Srinivasan et al. also do not teach the first and second webs to be prebonded. Abuto et al. also disclose a three layer elastic composite material for use in absorbent articles (Abstract). Abuto et al. disclose that the facing layers of carded webs are bonded work particularly well (column 7, lines 34-36). It would have been obvious to a person having ordinary skill in the art at the time of the invention to use carded webs that are prebonded in the composite of Srinivasan et al. as taught by Abuto et al. in order to create a stronger composite material.

### ***Response to Arguments***

17. Applicant's arguments with respect to claims 21 and 23-31 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeremy R. Pierce whose telephone number is (703) 605-4243. The examiner can normally be reached on Monday-Thursday 7-4:30 and alternate Fridays 7-4.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (703) 308-2414. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

JRP  
JRP

*Elizabeth M. Cole*  
ELIZABETH M. COLE  
PRIMARY EXAMINER